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11  
12 IN THE UNITED STATES DISTRICT COURT  
13 FOR THE DISTRICT OF ARIZONA

14 United States of America,  
15 Plaintiff,  
16 vs.  
17 Angela Marie Ewing,  
18 Defendant.

CR 13-01161-002-TUC-FRZ (JR)

19  
20 **MOTION IN LIMINE:**  
21 **(To Preclude Improper Argument)**

22  
23 Counsel on behalf of Defendant, Angela M. Ewing, pursuant to the Fifth  
24 Amendment (Due Process and Grand Jury clauses) and the Sixth (right to jury trial)  
25 Amendment, hereby requests a ruling on this Motion *in limine* pre-trial to prevent  
26 prejudice to the defendant at trial

27  
28 RESPECTFULLY SUBMITTED: February 6, 2014.

29  
30 JON M. SANDS  
31 Federal Public Defender  
32  
33 */s/ Jay A. Marble*  
34 **JAY A. MARBLE**  
35 Assistant Federal Public Defender

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37 ECF Copy to:  
38 Ryan DeJoe, Assistant United States Attorney  
39  
40 Pamela Katzenberg, Attorney for Co-Defendant Macias

## 1                   MEMORANDUM OF POINTS AND AUTHORITIES

### 2                   I. Motion in Limine: Improper Argument not supported by law

3                   Ms. Ewing, the defendant, asks this Court to preclude the Government from  
4                   arguing at trial that Ms. Ewing's role in "the conspiracy as a currency smuggler is  
5                   sufficient to sustain a conviction." Doc 55, p. 6. This argument is an improper statement  
6                   of the law. *United States v. Perlaza*, 439 F.3d 1149, 1169-71 (9<sup>th</sup> Cir. 2006) (finding that  
7                   prosecutor's misstatement of the law - telling the jurors that the presumption of innocence  
8                   vanishes when you start deliberating, the presumption of guilt takes over - was reversible  
9                   misconduct).

10                  The Government has charged Ms. Ewing in a six-count indictment. Two of the  
11                  counts in the indictment are conspiracy charges. Count 1 charges Ms. Ewing with  
12                  Conspiracy to possess with intent to distribute heroin and methamphetamine in violation  
13                  of 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 846. Count 4 charges Ms. Ewing with  
14                  conspiracy to unlawfully import heroin and methamphetamine in violation of 21 U.S.C. §  
15                  952(a), 21 U.S.C. § 960(a) and 21 U.S.C. § 963. Count 1, by law, requires the  
16                  Government to establish beyond a reasonable doubt that the defendant knew of the  
17                  purpose of the conspiracy and joined in the agreement with intent to further its unlawful  
18                  object or purpose—possession with intent to distribute methamphetamine and heroin.  
19                  Ninth Cir. Model Jury Instruction 9.19. As well, Count 4 requires the Government to  
20                  prove beyond a reasonable doubt that Ms. Ewing conspired to unlawfully import  
21                  methamphetamine and heroin. The Government must prove beyond a reasonable doubt  
22                  that Ms. Ewing knew this was the object of the conspiracy and agreed to participate.

Simply arguing that Ms. Ewing agreed to smuggle U.S. currency into Mexico is “sufficient” is incorrect and prejudicial. This type of argument could persuade the jury that agreeing to participate in a *conspiracy to bulk cash smuggle* is sufficient to convict the defendant in a *conspiracy to possess with intent to distribute narcotic drugs* case or a *conspiracy to unlawfully import methamphetamine and heroin* case. This type of argument is improper since the objects of these conspiracies are different, and the agreements required to participate in each separate conspiracy are different. The Government should not be able to generally argue that agreeing to participate in a separate, uncharged conspiracy makes the defendant guilty, or is sufficient for the jury to find defendant guilty, of the conspiracies charged in the indictment. Such argument would violate Ms. Ewing’s Fifth and Sixth Amendment rights to a fair trial and to a jury trial on all the required elements of the offense charged by the grand jury in the indictment.

RESPECTFULLY SUBMITTED: February 6, 2014.

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Assistant Federal Public Defender

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Pamela Katzenberg, Attorney for co-defendant Reyna Macias